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U.S. BANKRUPTCY COURT
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEW JERSEY

In Re:

Bed Bath & Beyond Inc., *et al.*,

Debtors.

Case No. 23-13359 (VFP)

Chapter 11

(Jointly Administered)

Hearing Date: May 16, 2023
Hearing Time: 2:00 p.m. (ET)

[Relates to Docket No. 28]

MARICOPA COUNTY TREASURER'S OBJECTION TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO ASSUME THE CONSULTING AGREEMENTS, (II) AUTHORIZING AND APPROVING THE CONDUCT OF STORE CLOSING SALES, WITH SUCH SALE TO BE FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES, (III) AUTHORIZING CUSTOMARY BONUSES TO EMPLOYEES OF CLOSING STORES, AND (IV) GRANTING RELATED RELIEF

Maricopa County Treasurer ("MCT"), a secured tax lien creditor, by and through its undersigned counsel, hereby objects to the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Assume the Consulting Agreements, (II) Authorizing and Approving the Conduct of Store Closing Sales, With Such Sale to be Free and Clear of Liens, Claims, and Encumbrances, (III) Authorizing Customary Bonuses to*

1 *Employees of Closing Stores, and (IV) Granting Related Relief.* (DE 28) (the "Sale
2 Motion"). **MCT was not provided notice of the Sale Motion or the final hearing.** MCT
3 objects to the Sale Motion for the reasons set forth below.

4 **1. MCT's Claims:**

5 On May 11, 2023, MCT filed a Secured Tax Proof of Claim (the "MCT Claim") in
6 the case of Bed Bath & Beyond Inc. in the estimated amount of \$35,478.08 representing
7 the estimated 2023 personal property taxes on Debtors' property located in Maricopa
8 County, Arizona. Interest accrues, or will accrue, at the statutory rate of 16% per year
9 simple, if not timely paid, until paid in full. See 11 U.S.C. § 511 and Arizona Revised
10 Statutes ("A.R.S.") § 42-18053.

11 On May 11, 2023, MCT filed a Secured Tax Proof of Claim (the "MCT Claim") in
12 the case of Buy Buy Baby, Inc. in the estimated amount of \$4,947.83 representing the
13 estimated 2023 personal property taxes on Debtors' property located in Maricopa County,
14 Arizona. Interest accrues, or will accrue, at the statutory rate of 16% per year simple, if
15 not timely paid, until paid in full. See 11 U.S.C. § 511 and A.R.S. § 42-18053.

16 **2. Objection:**

17 MCT objects to the Sale Motion because it fails to provide for payment of the
18 personal property taxes included in the MCT Claims first from the sale proceeds or from
19 a segregated account. The Sale Motion proposes to close and sell certain stores and
20 Store Closure Assets of the Debtors, including stores and Store Closure Assets in
21 Maricopa County. The Store Closure Assets consists of furniture, fixtures and equipment.
22 As set forth above, MCT's Claims for personal property taxes include Store Closure
23 Assets. The personal property tax liens are "prior and superior to any other liens of every
24 kind and description regardless of when another lien attached." A.R.S. § 42-19106 and

1 42-17153. Arizona law provides that "[i]f the tax has not been paid on property sold at
2 judicial sale, or sold by an executor, administrator, guardian or trustee, the person making
3 the sale shall pay the taxes, penalties and costs from the proceeds of the sale." A.R.S. §
4 42-18059. Further, "[i]t is unlawful for the owner, a lienholder, a conditional vendor or any
5 other person to knowingly sell or transfer personal property or remove it from its location
6 until the taxes on the property are paid." A.R.S. § 42-19107.

7 **3. Lien Retention For Personal Property Taxes:**

8 MCT further objects to the Sale Motion as it fails to provide for retention of the
9 personal property tax liens. Retention of MCT's tax liens are necessary to ensure that the
10 personal property taxes and interest are paid in full. The personal property tax liens on
11 the property to be sold are not discharged until the taxes are paid or the title to the property
12 vests in a purchaser of the property for taxes. A.R.S. § 42-19106 and 42-17153.
13 Accordingly, the liens for personal property taxes encumbering the property cannot be
14 removed until the personal property taxes are paid in full.

15 WHEREFORE, Maricopa County objects to the Sale Motion unless the sale order
16 provides that (i) the personal property taxes included in the MCT Claims are to be fully
17 paid, including interest, from the sale proceeds or from a segregated account, and (ii) the
18 personal property tax liens shall remain attached to the property until the 2022 and 2023
19 personal property taxes and interest are paid in full.

20 RESPECTFULLY SUBMITTED this 11th day of May, 2023.

21
22 RACHEL H. MITCHELL
MARICOPA COUNTY ATTORNEY

23 BY:


24 PETER MUTHIG
Deputy County Attorney

Attorney for Maricopa County Treasurer

ORIGINAL of the foregoing filed by overnight mail
this 11th day of May, 2023, with:

Clerk, United States Bankruptcy Court
District of New Jersey
MLK Jr Federal Building
50 Walnut Street
Newark, NJ 07102

COPY of the foregoing mailed/e-mailed,
this 11th day of May, 2023, to:

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